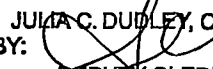


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JUN 29 2017

JULIA C. DUDLEY, CLERK
BY: 
DEPUTY CLERK

UNITED STATES OF AMERICA

Case No. 7:11-cr-00060-1

v.

MEMORANDUM OPINION

MICHAEL LOVERN GUTHRIE,
Petitioner.

By: Hon. Michael F. Urbanski
United States District Judge

Michael Lovern Guthrie, a federal inmate proceeding pro se, filed a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. Court records indicate that the court already dismissed (Dkt. No. 61) a prior § 2255 motion (Dkt. No. 53) by which Petitioner could have raised the instant challenge. Petitioner admittedly knew, as early as before his guilty plea hearing, the facts supporting his current claims: the case agent had falsely testified, fabricated evidence, and threatened him to coerce a guilty plea, and counsel failed to impeach the case agent and poorly advised Petitioner to plead guilty to avoid a life sentence on account of the case agent's known dishonesty. Thus, the § 2255 motion is a second or subsequent motion under 28 U.S.C. § 2255(h) because the operative facts now relied upon existed when the first § 2255 motion was adjudicated. Cf. United States v. Hairston, 754 F.3d 258, 262 (4th Cir. 2014).

The court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that a claim in the motion meets certain criteria. See 28 U.S.C. § 2255(h). As Petitioner has not submitted any evidence of having obtained that certification, the court dismisses the § 2255 motion without prejudice as successive. Based upon the court's finding that Petitioner has not made the requisite substantial showing of denial of a constitutional right as required by 28 U.S.C. § 2253(c) and Slack v. McDaniel, 529 U.S. 473, 484 (2000), a certificate of appealability is denied.

ENTER: This 29th day of June, 2017.


United States District Judge